

AMENDED IN ASSEMBLY JUNE 20, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 458

**Introduced by Senator Wright
(Coauthor: Senator Yee)**

(Coauthors: Assembly Members Bradford, Brown, Hall, Jones-Sawyer,
V. Manuel Pérez, Rendon, and Ting)

February 21, 2013

An act to add Section 186.34 to the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as amended, Wright. Gangs: statewide database.

Existing law, the California Street Terrorism Enforcement and Prevention Act, makes it unlawful to engage in criminal gang activity, including actively participating in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and willfully promoting, furthering, or assisting in any felonious criminal conduct by members of the gang.

This bill would require, prior to a local law enforcement agency designating, or submitting a document to the Attorney General's office for the purpose of designating, a person as a gang member, associate, or affiliate in a shared gang database, as defined, the local law

enforcement agency to provide written notice to the person and his or her parent or guardian of the designation and the basis for the designation if the person is under 18 years of age. The bill would authorize the person or his or her parent or guardian to submit written documentation contesting the designation and would require the local law enforcement agency to provide written verification of its decision within 60 days.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.34 is added to the Penal Code, to
2 read:
3 186.34. (a) For purposes of this section, “shared gang
4 database” shall mean any database that allows access for any local
5 law enforcement agency and contains personal, identifying
6 information in which a person may be designated as a suspected
7 gang member, associate, or affiliate, or for which entry of a person
8 in the database reflects a designation of that person as a suspected
9 gang member, associate, or affiliate.
10 (b) To the extent a local law enforcement agency elects to utilize
11 a shared gang database, as defined in subdivision (a), prior to a
12 local law enforcement agency designating a person as a suspected
13 gang member, associate, or affiliate in a shared gang database, or
14 submitting a document to the Attorney General’s office for the
15 purpose of designating a person in a shared gang database, or
16 otherwise identifying the person in a shared gang database, the
17 local law enforcement agency shall, if the person is under 18 years
18 of age, provide written notice to the person and his or her parent
19 or guardian of the designation and the basis for the designation.
20 (c) Subsequent to the notice described in subdivision (b), the
21 person to be designated as a suspected gang member, associate,
22 or affiliate, or his or her parent or guardian, may submit written
23 documentation to the local law enforcement agency contesting the
24 designation. The local law enforcement agency shall review the
25 documentation, and if the agency determines that the person is not
26 a suspected gang member, associate, or affiliate, the agency shall
27 remove the person from the database. The local law enforcement
28 agency shall provide the person and his or her parent or guardian

1 with written verification of the agency's decision within 60 days
2 of submission of the written documentation contesting the
3 designation.

4 (d) The person to be designated as a suspected gang member,
5 associate, or affiliate, or his or her parent or guardian, shall be able
6 to request information as to whether the person has been designated
7 as a suspected gang member, associate, or affiliate.

8 (e) The local law enforcement agency shall not disclose the
9 location of the person to be designated as a suspected gang
10 member, associate, or affiliate to his or her parent or guardian if
11 the agency determines there is credible evidence that the
12 information would endanger the health or safety of the minor.

13 (f) A shared gang database ~~maintained pursuant to, as defined~~
14 ~~in this section~~ *section*, shall retain records related to the gang
15 activity of the individuals in the database as follows:

16 (1) A record that has not been modified by the addition of new
17 criteria to determine gang profile for a five-year period shall be
18 purged. Individuals who are in custody shall be subject to the same
19 purge policy under this paragraph.

20 (2) A record created by an agency shall not be purged pursuant
21 to paragraph (1) if that record has been substantially modified by
22 another end user agency. For the purpose of this subdivision,
23 substantially modified means ~~that gang member criteria is renewed~~
24 ~~or added~~ *the addition of new gang member criteria* to the subject's
25 record or the subject has a new arrest record *with a gang nexus* in
26 his or her record.

27 (g) ~~Nothing~~ *Except as expressly allowed by this section, nothing*
28 *in this section* shall require a local law enforcement agency to
29 disclose any information protected under Section 1040 or 1041 of
30 the Evidence Code or Section 6254 of the Government Code.